

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 839 OF 2005
ALONGWITH
SECOND APPEAL NO. 841 OF 2005**

Prabhakar Ramchandra Kulthe ... Appellant

V/s

Dwarkabai Vitthal Pandharpurkar ... Respondent

Mr. P.K. Hushing for the appellant (in both appeals).

Mr. P.B. Shah for the respondent (in both appeals).

CORAM: P.V. KAKADE, J.

DATED: 29TH AUGUST, 2005

P.C.:

1. Both these appeals are being taken up for admission and final disposal as they arise out of common judgment passed by the Civil Judge, J.D., Daund, dated 29.1.1999.

2. The present appellant preferred appeals against the judgment and order passed by the Addl. Dist. Judge, Baramati in Civil Appeal No. 3 of 2000 and Civil Appeal No. 9 of 2000, while the earlier appeal filed by the original defendant Prabhakar was dismissed and later appeal filed by original plaintiff Dwarkabai came to be

allowed.

3. I have heard the learned counsel for both parties. Perused the record.

4. The plaintiff filed the suit for declaration and perpetual injunction against the defendant on the ground that while obtaining the sale deed of the suit property, the legal heirs of deceased Ramchandra had subjected her to fraud and misrepresentation. It was also alleged that the suit sale deed was without consideration and consequential relief of perpetual injunction was also sought for.

Defendant contested the claim on various grounds inter-alia submitting that the allegations made by the plaintiff were not correct and the suit sale deed was executed by the plaintiff in proper manner and, as such, the suit was sought to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove that she was subjected to fraud while executing the suit sale deed. It was also held that the plaintiff failed to prove that the suit sale deed was

without consideration. However, it was held proved that the defendant had obstructed the possession of the plaintiff and, therefore, the suit for perpetual injunction came to be decreed while the suit for declaration was dismissed.

6. Both parties preferred appeals against the said judgment and order to the District Court, Baramati. The learned Addl. District Judge, after hearing both parties decreed the plaintiff's suit for declaration and dismissed the defendant's appeal against the order passed by the lower Court. Hence the present appeals.

7. At the outset, it may be noted that there is absolutely no substantial question of law involved in these appeals. It was submitted on behalf of the

appellant that contents of the plaint were sufficient to show that the perpetrator of the alleged fraud was the defendant as well as one Ramesh and Ramesh was not party to the suit and, as such, the suit could not be held to be maintainable when Ramesh was not defendant and an element of fraud could not be proved in his absence, however, this submission is totally devoid of any merits. I have perused the contents of the plaint in

that regard and I have absolutely no doubt that said Ramesh was not necessary or proper party to the suit and defendant's presence in the suit who was alleged to be the main perpetrator of the fraud, was sufficient to adjudicate the issue involved.

8. On perusal of the judgment of the lower appellate Court, it is seen that, on the basis of available evidence, the lower appellate Court has come to the conclusion that the plaintiff had proved that the sale deed dated 4.10.1991 was obtained by defendant and heirs of Ramchandra fraudulently. It was also proved that the sale deed dated 4.10.1991 was without consideration and further it was held to be proved that the plaintiff was in possession and it was obstructed by the defendant and hence the suit came to be decreed in its entirety. The learned counsel for the appellant sought to submit that the learned lower appellate Court Judge while adjudicating the dispute on merits summoned Darkhast proceeding of the earlier dispute and scrutinised the same in adjudicating the present dispute. In my considered view, no law prevent the Courts of facts from scrutiny of relevant documents especially which were part of execution proceeding No. 4 of 1982 relating to the partition of the suit property in order to come to

the proper conclusion in respect of the issues involved. Suffice is to say, therefore, I am satisfied that the lower appellate Court has rightly adjudicated the dispute by properly appreciating the evidence on record. Time again the Apex Court has held that it is not within the domain of the High Court to investigate the ground on which the findings were arrived at by the last Court of fact, being the first appellate Court. In a case, wherefrom a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. It is needless to mention that mere appreciation of facts, documentary evidence or the meaning of entries in and contents of documents cannot be held to be raising substantial question of law. In the present case before us, the factual matrix appears to be properly appreciated and hence I do not see any reason why the second appeal should be entertained at all.

In the result, both appeals stand dismissed with no order as to costs.

Consequently, Civil Application No. 1378 of 2005 in Second Appeal No. 841 of 2005 also stands dismissed

with no order as to costs.

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